

Senate Bill 230

By: Senators Mullis of the 53rd, Rogers of the 21st, Wiles of the 37th and Murphy of the 27th

**AS PASSED**

AN ACT

To amend Chapter 20 of Title 45 of the Official Code of Georgia Annotated, relating to personnel administration, so as to define the classified and unclassified service; to provide for the authority of the State Personnel Board and the State Merit System relative to both classified and unclassified service; to modify language relative to these authorizations and definitions to rescind provisions governing interdepartmental transfers; to change certain provisions relating to classified and nonclassified employees; to change definitions relating to personnel administration and classified and unclassified employees; to clarify certain duties of the State Personnel Board; to modify certain duties of the commissioner of personnel administration; to rename the Advisory Council for Personnel Administration and change the manner in which persons become members of the council; to modify certain rights of unclassified service; to clarify certain rights and procedures relating to classified employees; to change public management certificate programs to the Governor's Executive Leadership Institute; to repeal certain penalties for violations of Article 1 of said chapter or rules or regulations promulgated thereunder; to repeal certain rights of merit system officers and employees; to change application of certain provisions relating to counseling to employees; to clarify certain provisions relating to accrual of leave, holidays, and compensation for closing of state offices relative to classified and unclassified employees; to modify the application of certain provisions relating to termination or elimination of classified positions or employees; to delete certain exclusions relating to the performance management system provided for classified employees; to modify the definition of employee relative to random drug testing of employees in high-risk jobs; to modify certain procedures relative to drug testing; to modify and delete certain provisions relating to employee drug testing and drug testing laboratories; to delete and clarify certain provisions relating to analysis of positions warranting established test and testing requirements relative to merit system employees; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 230

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**SECTION 1.**

Chapter 20 of Title 45 of the Official Code of Georgia Annotated, relating to personnel administration, is amended by revising Code Section 45-20-1, relating to purposes and principles relative to personnel administration, as follows:

"45-20-1.

(a) It is the purpose of this article to establish in the state a system of personnel administration which will attract, select, and retain the best employees based on merit, free from coercive political influences, with incentives in the form of equal opportunities for all; which will provide technically competent and loyal personnel to render impartial service to the public at all times and to render such service according to the dictates of ethics and morality; and which will remove unnecessary and inefficient employees. It is specifically the intent of the General Assembly to promote this purpose by allowing agencies greater flexibility in personnel management so as to promote the overall effectiveness and efficiency of state government. To this end, and in accordance with Code Sections 45-20-2 and 45-20-6, all positions filled after July 1, 1996, shall be included in the unclassified service of the state merit system, except as provided in Code Section 15-11-24.3. It is also specifically the intent of the General Assembly that employees in the classified service prior to July 1, 1996, shall continue to be employees in the classified service so long as they remain in classified positions or as otherwise provided by law. It is further specifically the intent of the General Assembly that state government operate within a framework of consistent core personnel policies and practices across all state agencies and entities and that the state's most valued resource, its employees, be managed in a manner to promote work force productivity and sound business practices.

(b) In order to achieve these purposes, it is the policy of the state that agencies treat all employees in accordance with the following principles:

(1) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, national origin, sex, age, disability, religious creed, or political affiliations. This 'fair treatment' principle includes compliance with all state and federal equal employment opportunity and nondiscrimination laws;

(2) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial employment;

- (3) Providing equitable and adequate compensation based on merit, performance, job value, and competitiveness within applicable labor markets;
  - (4) Training employees, as needed, to assure high quality performance and to provide work force skills needed to maintain and advance the state's goals and objectives;
  - (5) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance where possible and appropriate, and separating employees whose performance is inadequate; and
  - (6) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.
- (c) It shall be the responsibility of the state merit system to perform the following functions:
- (1) Establish and maintain a state-wide system of pay ranges for all job classes;
  - (2) Define job classes, establish associated minimum qualifications for those classes and assign those classes to appropriate pay ranges;
  - (3) Develop and maintain a common employment application form to be used by all applicants for state employment, which form may be supplemented as necessary by agencies in seeking information about agency job classes;
  - (4) Serve as the central contact point for all potential employees in order to streamline state-wide recruiting for applicants, to provide for a state-wide applicant data base, to refer applicants to agencies, and make applicant data available to agencies for review and consideration;
  - (5) Upon request, develop, validate, or develop and validate applicant screening devices being utilized by agencies;
  - (6) Upon request, administer screening devices on behalf of agencies;
  - (7) Make employment related training available to agencies and allow agencies the opportunity to provide input into the nature and scope of said training programs;
  - (8) In consultation with agencies, establish state-wide criteria for the implementation of rules and policies adopted by the State Personnel Board which agencies shall use in developing internal processes for classification, compensation, pay for performance, and performance management, including processes involved in defining job classes, establishing and applying associated minimum qualifications, assigning jobs to appropriate state-wide pay ranges, developing and applying applicant screening methods, and measuring worker effectiveness;

- (9) Audit agencies' processes as referred to in paragraph (8) of this subsection and report findings annually to the Governor and the General Assembly in conjunction with an annual report on the overall status of the state work force. The state merit system shall not be required to distribute copies of the findings or annual report referred to in this paragraph to the members of the General Assembly but shall notify the members of the availability of the materials in the manner which it deems to be most effective and efficient;
- (10) Serve as consultant to agencies on work force planning and effective work force strategies, provide technical support assistance, and direct services to agencies as requested; and
- (11) Maintain and make available to the public at large a state-wide central registry of employment vacancies and job announcements in state government as provided to the state merit system by agencies.
- (d) Subsection (c) of this Code section shall not apply to the legislative or judicial branches or to the board of regents.
- (e) Each agency shall develop an annual work force plan according to state-wide criteria and guidelines and shall provide a report of such plan annually to the state merit system for incorporation into the state-wide work force plan to be submitted to the Governor and the General Assembly.
- (f) In the event agencies do not use a competitive civil service examination to fill some or all of their unclassified positions, it is expressly the intent of the General Assembly that appropriate consideration be given to veterans as defined under Article IV, Section III, Paragraph II of the Constitution of Georgia and Article 2 of Chapter 2 of this title in the filling of job vacancies in this state. Guidelines defining consideration practices shall be developed at the state level. Agencies shall specify agency policies and practices to implement appropriate consideration of military veterans in filling agency job vacancies.
- (g) The rules of statutory construction contained in Chapter 3 of Title 1, relating to general provisions concerning the construction of statutes, as now or hereafter amended, shall apply to this article."

## **SECTION 2.**

Said chapter is further amended by revising Code Section 45-20-2, relating to definitions relative to personnel administration, as follows:

"45-20-2.

As used in this chapter, the term:

- (1) 'Appointing authority' means the person or groups of persons authorized by law or delegated authority to make appointments to fill positions.
- (2) 'Classified service' means that employment status conferring rights of appeal, as set forth in Code Sections 45-20-8 and 45-20-9. 'Classified service' includes only those employees of state departments as defined in this Code section who were in the classified service as of June 30, 1996, and who have remained in classified positions without a break in service since that date.
- (3) 'Commissioner of personnel administration' and 'commissioner' mean the chief executive officer of the state merit system who is responsible for administering the state personnel program in accordance with applicable state and federal laws and the policies and rules of the State Personnel Board.
- (4) 'Classified employee' means an employee who was in the classified service as of June 30, 1996, and who has remained in a classified position without a break in service since that date.
- (5) 'Classified position' means a position that was classified on June 30, 1996, and that subsequent to June 30, 1996, has not been held by an unclassified employee.
- (6) 'Department' and 'agency' are synonymous and mean all separate and distinct divisions and subdivisions of state government whose heads are legally authorized to appoint employees to positions; but these terms shall not include authorities, public corporations, the legislative and judicial branches, and the board of regents. 'Department' and 'agency' shall include an agency assigned to a department for administrative purposes and shall also include local departments of public health, county departments of family and children services, community service boards, and units of the Department of Defense with local employees.
- (7) 'Employment at will' means an employment relationship in which either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason.
- (8) 'Position' means a set of duties and responsibilities assigned or delegated by competent authority for performance by one person.
- (9) 'Rules and regulations' and 'merit system rules and regulations' mean the governing provisions of the state merit system, as adopted by the State Personnel Board and approved by the Governor which give force and effect to the policies of the State Personnel Board.

(10) 'State Personnel Board' and 'board' are synonymous and mean the body authorized by Article IV, Section III, Paragraph I of the Constitution of Georgia.

(11) 'State Personnel Board policies' means those policies adopted by the board and approved by the Governor which describe the goals and objectives of the state personnel program and serve as a basis for the formulation and administration of the merit system rules and regulations.

(12) 'Unclassified service' means employment at will and includes all employees except those in the classified service as defined in this Code section.

(13) 'Working test' or 'working test period' means a probationary period of employment in a classified position during which the employee must demonstrate to the satisfaction of the appointing authority that he or she has the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which employed. The working test period shall apply to each promotion of a classified employee to a classified position. The commissioner may fix the length of the working test period for any job at not less than six months nor more than 18 months exclusive of any time in nonpay status; provided, however, that the length of the working test period for troopers of the Uniform Division of the Department of Public Safety shall be 18 months.

(14) 'Working test employee' or 'employee on working test' means a classified employee serving a working test period in the position in which he or she is employed; provided, however, that an employee serving a working test period following a promotion in the same department from a lower class in which he or she had successfully completed a working test period shall retain appeal rights in the lower class until he or she successfully completes the working test period in the job to which he or she has been promoted."

### **SECTION 3.**

Said chapter is further amended by revising Code Section 45-20-3, relating to duties and functions of the State Personnel Board, as follows:

"45-20-3.

(a)(1) The State Personnel Board shall prescribe the guidelines by which the state's personnel policies shall be administered. The board shall hold regular meetings as needed for the proper discharge of its duties.

(2) Members of the board shall receive no salary but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is attending meetings or performing official business for the board, plus

reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance or official business.

(3) Three members shall constitute a quorum. Only the votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the State Personnel Board, provided there is a quorum.

(b) It shall be the specific duty and function of the State Personnel Board:

(1) To represent the public interest in the improvement of personnel administration in all state departments;

(2) To determine appropriate human resource management goals and objectives and prescribe policies for their accomplishment;

(3) At public hearings, to adopt and amend policies, rules, and regulations effectuating the State Merit System of Personnel Administration and the state's personnel policies and practices subject to approval by the Governor. Notice of State Personnel Board meetings shall be released to all departments and agencies and shall be prominently posted at the office of the State Merit System of Personnel Administration at least ten days prior to each board meeting;

(4) Where the board deems a review appropriate, for employees of the classified service, to ensure that a review is afforded on a dismissal and other adverse personnel actions defined by the rules and regulations of the State Personnel Board. All appeals determinations of the board shall be written and documented as to findings of fact, bases for decisions, and prescribed remedies;

(5) To assure the administration of state and federal laws relating to state personnel administration;

(6) To establish an annual budget covering all the costs of State Personnel Board operations, said budget to be incorporated as a component of the annual budget of the state merit system; and

(7) To promote public understanding of the purposes, policies, and practices of the State Merit System of Personnel Administration and to advise and assist the several state departments in fostering merit selection and securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards under the state's personnel system."

**SECTION 4.**

Said chapter is further amended by revising Code Section 45-20-4, relating to the creation of the commissioner of personnel administration, as follows:

"45-20-4.

(a) There is created the position of commissioner of personnel administration. The commissioner shall be appointed by the Governor after consultation with the State Personnel Board subject to confirmation by the Senate. The Governor shall fix the compensation of the commissioner, who shall serve at the pleasure of the Governor.

(b) The duties and responsibilities of the commissioner shall be:

(1) To serve as executive secretary to the board, to attend meetings as directed by the board, and to provide such professional, technical, and other supportive assistance as may be required by the board in the performance of its duties;

(2) Consistent with board policy, to administer the operations of the state merit system and to otherwise act in the capacity of chief executive officer of the state personnel administration program;

(3) To submit to the Governor the rules and regulations adopted by the State Personnel Board effectuating the state merit system. Such rules and regulations when approved by the Governor shall have the force and effect of law and shall be binding upon the state departments covered by this article and shall include provisions for the establishment and maintenance of classification and compensation plans, the conduct of examinations, appointments, promotions, transfers, demotions, appeals of classified employees, reports of performance, payroll certification, and other phases of personnel administration. Such rules and regulations shall define and prohibit improper political activity by any departmental employee of the State Personnel Board or any employee covered under the terms of this article and shall provide that there shall be no discrimination for or against any person or employee in any manner, to include, but not be limited to, hiring, discharge, compensation, benefits, terms or conditions of employment, promotion, job classification, transfer, privileges, or demotion because of political affiliation, religious affiliation, race, creed, national origin, sex, age between 40 and 70 years, or physical disability. Such rules and regulations shall conform to the minimum standards for merit systems of personnel administration as specified by those federal departments from which federal funds are obtained for use by the several state departments covered by this article. Compensation plans and modifications thereto promulgated under the rules and regulations of the commissioner shall become effective as adopted upon approval of the director of the Office of Planning and Budget;



- (4) To administer the rules and regulations and all other operational aspects of the state merit system and to assure compliance therewith in all departments;
- (5) To appoint and prescribe the duties of the merit system staff;
- (6) To establish an annual budget covering all the costs of operating the State Merit System of Personnel Administration including the State Personnel Board, and the costs of administering such federal laws relating to personnel administration as the Governor may direct including the Intergovernmental Personnel Act of 1970, and to determine an equitable basis of prorating the annual costs among the several departments covered by the State Merit System of Personnel Administration, provided that upon approval of such budget by the Governor, the Governor shall be empowered to direct that the necessary pro rata share of the several assessed departments concerned be made available for expenditure by the state merit system in the same manner as appropriated funds are expended by other departments of the state;
- (7) To ensure compliance with all applicable state and federal statutes and regulations concerning discrimination in employment, personnel administration, and related matters;
- (8) To cooperate with appointing authorities in the administration of this article in order to promote public service and establish conditions of service which will attract and retain employees of character and ability and to increase efficiency and economy in governmental departments by improving the methods of personnel administration with full recognition of the requirements and needs of management; and
- (9) To appoint and prescribe the duties of a deputy commissioner of personnel administration who shall be the second highest executive officer in the state merit system and the deputy executive secretary to the State Personnel Board; and to appoint and prescribe the duties of such other assistant commissioners of personnel administration as the commissioner deems appropriate. The deputy commissioner and the assistant commissioners shall have the authority to perform any duty assigned to the commissioner if delegated to them by the commissioner."

#### **SECTION 5.**

Said chapter is further amended by revising Code Section 45-20-5, relating to the creation of the Advisory Council for Personnel Administration, as follows:

"45-20-5.

- (a) There is created the Council for State Personnel Administration. The objectives of the council shall be:
  - (1) To promote improvements in the personnel program in state government;

- (2) To provide a forum for the interchange of information relating to the state personnel program;
  - (3) To serve as a channel through which the operating agencies may express their opinions on matters affecting state personnel;
  - (4) To seek equitable interpretation and application of the laws, rules, regulations, policies, and procedures which affect state personnel management and administration; and
  - (5) To strive for professional consensus consistent with the democratic process in all actions which it may undertake.
- (b) Membership in the council shall be as defined in the bylaws of the council.
- (c) The council is authorized to adopt bylaws which prescribe its organizational structure, officers and terms and conditions of office, meeting schedules, and such other organizational and operational procedures as are necessary for its lawful and effective functioning. As the professional association authorized to represent the interests of the several departments in the area of state personnel administration, the council shall through its offices have direct access to the board, the commissioner, the Governor, and the General Assembly to present grievances, suggestions, and recommendations."

#### **SECTION 6.**

Said chapter is further amended by revising Code Section 45-20-6, relating to the composition of classified and unclassified service, as follows:

"45-20-6.

- (a) The classified service as defined by Code Section 45-20-2 shall consist of only those employees who were in the classified service on June 30, 1996, and who have remained in a classified position without a break in service since that date. Any officer or employee who occupies a classified position under the state merit system prior to July 1, 1996, or as provided in Code Section 15-11-24.3 shall remain in the classified service so long as such officer or employee shall remain in a classified position or as otherwise provided by law. Employees in the classified service shall have, upon completing a working test period, appeal rights as provided in Code Sections 45-20-8 and 45-20-9.
- (b) The unclassified service as defined by Code Section 45-20-2 shall consist of all employees in the departments of state government not included in the classified service under this article. Employees in the unclassified service shall be employees at will and shall not be afforded appeal rights.

(c) Exclusion from the classified service shall not exclude any employee, officer, or official from eligibility for membership or membership in the Employees' Retirement System of Georgia, provided that such employee, officer, or official is otherwise eligible for membership under Chapter 2 of Title 47.

(d) It is the intent of the General Assembly that employees in the classified service be required to serve a working test period before they obtain rights of appeal and that the successful completion of this probationary period is part of the employment examination procedure. Each employee serving in a working test period shall be provided with management review by the appointing authority within ten calendar days of the date the employee has completed one-half of the working test period or as near to such date as is practicable. The management review shall include an evaluation of the employee's progress and recommendations, if any, for corrective action. The provision of management review pursuant to this subsection is solely for the purpose of promoting efficient management and employee development and shall not be interpreted as granting any additional rights to a working test employee. The State Personnel Board shall be responsible for adopting and amending rules and regulations establishing the guidelines to be used by the appointing authority in completing the management review pursuant to this subsection."

#### **SECTION 7.**

Said chapter is further amended by revising subsections (a) and (b) of Code Section 45-20-8, relating to the procedure for adverse action against permanent status employees, as follows:

"(a) Classified employees who have successfully completed a working test period may be dismissed from employment or otherwise adversely affected as to compensation or employment status only if such action is taken in accordance with the rules and regulations of the State Personnel Board governing adverse actions and appeals for classified employees.

(b) This article is not intended to create a property interest in the job, but rather to create only a procedure under which classified employees can be dismissed or otherwise adversely affected. The procedure adopted for dismissing a classified employee from employment or otherwise adversely affecting his or her compensation or employment status shall include, as a minimum, that the appointing authority must provide the classified employee with reasons for the action and an opportunity to file an appeal and request a hearing which may be held before either the board or an administrative law judge; provided, however, that the hearing may be held subsequent to the effective date of the

dismissal or other purported adverse action; provided, further, that the right to appeal shall not apply when persons are dismissed or otherwise adversely affected as to compensation due to curtailment of funds or reduction in staff when such action is in accordance with the rules and regulations of the State Personnel Board."

#### **SECTION 8.**

Said chapter is further amended by revising subsections (a) and (b) of Code Section 45-20-9, relating to the procedure for the conduct of hearings and appeals relating to adverse personnel actions, as follows:

"(a) Any laws to the contrary notwithstanding, all hearings on dismissals, other adverse personnel actions, and other purported violations of the rules and regulations as applied to classified employees shall be instituted by filing a written appeal with the Office of State Administrative Hearings upon such ground and in such form and under such procedure as may be prescribed by rules and regulations of the office. The party appealing and the department from whose action the appeal is taken shall be notified in writing within 15 days from the filing of the appeal that an appeal has been filed and the time for which a hearing is scheduled.

(b) The State Personnel Board, any member of the board, or an administrative law judge shall have the authority to do the following in connection with any hearing on a dismissal or other purported violation of the rules and regulations: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of the board's jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the board or the administrative law judge."

#### **SECTION 9.**

Said chapter is further amended by revising Code Section 45-20-12, relating to the implementation of public management certificate programs, as follows:

"45-20-12.

(a) The State Personnel Board and the State Merit System of Personnel Administration are authorized and directed to implement a sequential series of leadership development courses

of study and preparation in order to enhance the capacity of supervisors, managers, and executives to lead people at the direct, organizational, and strategic levels.

(b) The Governor's Executive Leadership Institute is implemented by the State Personnel Board and the State Merit System of Personnel Administration with the following objectives:

- (1) To establish and maintain a state government executive leadership development program to train and prepare current and future state government leaders;
- (2) To foster and maintain higher developmental, educational, and ethical standards in the field and practice of public leadership and management; and
- (3) To assist agencies of state government by establishing a more objective measure of a leader's professional preparation and knowledge."

#### **SECTION 10.**

Said chapter is further amended by striking Code Section 45-20-13, relating to penalties for violations of article or rules or regulations promulgated thereunder, as follows:

"45-20-13.

Reserved."

#### **SECTION 11.**

Said chapter is further amended by striking Code Section 45-20-14, relating to rights of merit system officers and employees, as follows:

"45-20-14.

Reserved."

#### **SECTION 12.**

Said chapter is further amended by revising Code Section 45-20-15, relating to confidentiality of information received by staff in counseling, as follows:

"45-20-15.

(a) As used in this Code section, the term:

- (1) 'Counseling session' means any discussions or meetings between a state employee and an official or other employee of the state merit system which are conducted under an official program established by the commissioner.
- (2) 'Information' means any written document or material acquired or produced as a part of a counseling session or the contents thereof and the contents of any discussions held as a part of a counseling session.

- (3) 'Program' means the employee relations counseling function established by the commissioner under which an employee is entitled to confidential counseling with regard to job related problems.
- (b) Except as provided in subsections (c), (d), and (e) of this Code section, information received or developed by the merit system staff in performing its counseling functions shall be maintained as confidential by the merit system and shall not be subject to disclosure by the merit system unless such information relates directly to proof of the possible violation of a criminal statute.
- (c) Information may be disclosed if such disclosure is authorized, in writing, by all parties to the counseling session in which the information was produced.
- (d)(1) Nothing contained in this Code section shall be construed to prohibit any person from disclosing any fact the knowledge of which was obtained independently of a counseling session.
- (2) The state merit system counselor may disclose information obtained in a counseling session to a manager of the state merit system for the purpose of employee counseling. Any such disclosure shall be confidential and the person to whom the information is disclosed shall be subject to the restrictions contained in subsection (b) of this Code section.
- (e) Information received by a state merit system counselor during a counseling session which indicates that unlawful activity is being conducted in the employee's agency may be disclosed to the commissioner. The commissioner may then notify the commissioner of any agency involved, the Governor, or the Attorney General for appropriate action.
- (f) Any hearing before the board or one of its hearing officers regarding the dismissal of a classified employee must be held in the county in which the employee is employed unless all parties agree to another location."

### **SECTION 13.**

Said chapter is further amended by revising subsections(a) and (b) of Code Section 45-20-16, relating to rules for accrual of leave, holidays and compensation for closing of state offices, as follows:

"(a) As a part of employee compensation, the State Personnel Board shall establish rules for the accrual and usage of leave and holidays and for compensation due to emergency closure of state offices or facilities for nontemporary employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the accrual and usage of leave and holidays and for compensation due to

emergency closure of state offices or facilities for nontemporary employees in accordance with State Personnel Board rules.

(b) Any employee who has accumulated sick leave shall be authorized to utilize such sick leave in accordance with the criteria established in the rules and regulations of the State Personnel Board; provided, however, that whenever an employee is sick and absent from work, the employee may be required to report each day by telephone to the appropriate authority. An employee shall not be required to provide documentation for the use of less than 17 hours of sick leave in any 30 day period, unless the employee has demonstrated excessive or abusive use of sick leave. The State Personnel Board shall establish rules and regulations that define excessive or abusive use."

#### **SECTION 14.**

Said chapter is further amended by striking Code Section 45-20-17, relating to interdepartmental transfers, as follows:

"45-20-17.

Reserved."

#### **SECTION 15.**

Said chapter is further amended by revising Code Section 45-20-19, relating to termination or elimination of classified positions or employees, as follows:

"45-20-19.

(a) This subsection shall apply whenever any department or agency proposes to eliminate one or more nontemporary positions or terminate the employment of one or more nontemporary employees through a reduction in force. No position elimination or employment termination subject to this subsection may become effective until at least 30 days after the affected employee has been notified in writing by the department or agency.

Such notice must contain at a minimum:

- (1) A statement of the nature of the proposed action to be taken with respect to the affected employee;
- (2) An explanation of the rights of the affected employee with respect to the proposed reduction in force, including any right of appeal, or other opportunities with respect to possible continued employment, any opportunities to apply for employment with any public or private party assuming the functions of the employee, or any other similar opportunities; and

(3) An explanation of the affected employee's rights and options with respect to his or her employment benefits, including but not limited to any right to continued participation in any retirement system or insurance plan.

(b) This subsection shall apply whenever any department or agency proposes to eliminate 25 or more nontemporary positions or terminate 25 or more nontemporary employees through a reduction in force. At least 15 days prior to giving the employee notice required by subsection (a) of this Code section, the department or agency shall give written notice to the President of the Senate and the Speaker of the House of the proposed reduction in force. Such notice shall:

(1) Identify the facilities and operations to be affected and the estimated number of employees to be affected; and

(2) State the reasons for the proposed action.

(c) Subsections (a) and (b) of this Code section shall not apply to a reduction in force which must become effective immediately because the department or agency has insufficient funds available to pay the salaries of the affected employees."

#### **SECTION 16.**

Said chapter is further amended by revising Code Section 45-20-21, relating to performance management system provided for classified employees, as follows:

"45-20-21.

The State Personnel Board shall provide for a performance management system for the periodic review and rating of the quality and quantity of work performed by employees. All agencies of the executive branch, exclusive of the Board of Regents of the University System of Georgia, shall provide for the review and rating of the quality and quantity of work performed by employees."

#### **SECTION 17.**

Said chapter is further amended by revising paragraph (1) of Code Section 45-20-90, relating to definitions relative to random drug testing of employees in high-risk jobs, as follows:

"(1) 'Employee' means any employee required to be certified under the provisions of Chapter 8 of Title 35 receiving a salary or hourly wage from any state agency, department, commission, bureau, board, or authority. 'Employee' shall also include any certified employee working under a personnel contract to provide personnel services,



including but not limited to medical, security, or transportation services to a state or other public agency."

#### **SECTION 18.**

Said chapter is further amended by revising Code Section 45-20-91, relating to determination of employees subject to testing, as follows:

"45-20-91.

- (a) Employees working in high-risk jobs shall be subject to random testing for evidence of use of illegal drugs.
- (b) The head of each state agency, department, commission, board, bureau, or authority shall determine those positions and groups of positions whose occupants regularly perform high-risk work where inattention to duty or errors in judgment while on duty will have the potential for significant risk of harm to the employee, other employees, or the general public. This Code section shall not be construed to include employees who do not regularly perform high-risk work regardless of the fact that other employees in the same classification do perform such high-risk work."

#### **SECTION 19.**

Said chapter is further amended by revising Code Section 45-20-92, relating to rules adopted by the State Personnel Board, as follows:

"45-20-92.

- (a) The State Personnel Board shall adopt rules to establish:
  - (1) The portion of employees in the high-risk work group that may be selected at random for testing at each testing period;
  - (2) Methods for assuring that employees are selected for testing on a random basis;
  - (3) Methods for assuring that privacy intrusions are minimized during collection of body fluid specimens;
  - (4) Methods for assuring that any body fluid specimens are stored and transported to testing laboratories at proper temperatures and under such conditions that the quality of the specimens shall not be jeopardized;
  - (5) Methods for assuring that the identity of employees whose tests show the usage of an illegal drug is limited to the staff who are entitled to this information; and
  - (6) The identification of those persons entitled to the information and shall adopt such other rules as it may deem appropriate to carry out the purposes of this article. The board

may, in its discretion, delegate to the commissioner of personnel administration such authority as appropriate to carry out the purposes of this article.

(b) The commissioner shall establish and maintain a list of those laboratories qualified to conduct established drug tests and shall determine which illegal drugs will be the subject of testing; provided, however, that no laboratory shall be so certified unless that laboratory, on a daily basis, adds to its urine testing program a minimum of 10 percent blind test specimens."

#### **SECTION 20.**

Said chapter is further amended by revising Code Section 45-20-111, relating to analysis of positions warranting established test and testing requirements, as follows:

"45-20-111.

(a) The head of each agency, department, commission, bureau, board, college, university, institution, or authority shall ensure an analysis is completed on all jobs in his or her organization to determine those positions whose duties and responsibilities warrant conducting an established test for illegal drugs in accordance with the provisions of this Code section. The analysis must be completed by July 1, 1995. All jobs established after this date must undergo a similar analysis no later than six weeks after establishment. An applicant for a designated position shall undergo a drug test consistent with these provisions.

(b) An applicant for state employment who is offered employment in a position designated by the head of the agency, department, commission, bureau, board, college, university, institution, or authority as requiring a drug test shall, prior to commencing employment or within ten days after commencing employment, submit to an established test for illegal drugs. All costs of such testing shall be paid from public funds by the employing agency or unit of state government. Any such test which indicates the presence of illegal drugs shall be followed by a confirmatory test using gas chromatography/mass spectrometry analysis. If the results of the confirmatory test indicate the presence of illegal drugs, such results shall be reviewed and interpreted by a medical review officer to determine if there is an alternative medical explanation. If the applicant provides appropriate documentation and the medical review officer determines that it was a legitimate usage of the substance, the result shall be reported as negative. Any applicant who fails to provide an alternative medical explanation shall be reported by the medical review officer as having a positive test result. Any applicant offered employment who refuses to submit to an established test for illegal drugs or whose test results are positive shall be disqualified from employment

by the state. Such disqualification shall not be removed for a period of two years from the date that such test was administered or offered, whichever is later. The State Personnel Board shall develop rules for the administration of the test and any verification procedures. Other covered units of state government shall also develop rules governing these procedures. The results of such tests shall remain confidential and shall not be a public record unless necessary for the administration of these provisions or otherwise mandated by other state or federal law."

#### **SECTION 21.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### **SECTION 22.**

All laws and parts of laws in conflict with this Act are repealed.